does not cease, but that its liability thereafter is that of a warehouseman only. And these observations apply as well to interstate shipments made after the CUMMINS AMENDMENT of 1915 (38 Stat. at L. 1196) as before, since the provision of the CARMACK AMENDMENT applicable to this situation is retained verbatim in the later act. W. H. S.

IMPAIRMENT OF THE OBLIGATION OF CONTRACT.—The United States Supreme Court has again indicated its astuteness to hold a decision of a State court to be a "law impairing the obligation of contracts," wherever it can find that the decision was in fact reached by giving effect to some subsequent legislation. Each of two street railway companies in Detroit was granted the privilege of occupying additional streets, by ordinances which contained stipulations binding each company to accept a single fare for transportation "over any of its lines in said city" and also to sell tickets at a certain reduced rate. The plaintiff in error, the Detroit United Railway, acquired and united under one organization the two street railway corporations referred to above and also certain suburban lines operating under village and township grants, contractual in their nature, but which franchises did not require that these suburban lines sell tickets at the same rate as was required by the city of Detroit from those street railways mentioned above, now a part of the Detroit United Railway system. Afterwards, by an act of the legislature, the territory in which these suburban lines were operating was annexed to the City of Detroit, the act providing that the annexed territory should be subject to all the ordinances and regulations of the city, with exceptions not now material. It was the contention of the State and of the City of Detroit that the provisions in the ordinances, which contained stipulations regarding fares, and which were assented to by the predecessors of the Detroit United Railway, were intended to be applicable throughout the city as it might from time to time be enlarged, and that the Detroit United Railway, as successor to these companies, is bound by the limitations of those ordinances as to all its lines within the city, not only as its limits existed at the time of passage of the ordinances, but also as to the lines it owns in the territory which was subsequently annexed to the city. The Supreme Court held that the giving of such effect to the annexation act would amount to an impairment of the obligation of contract. *Detroit United Railway* v. *People of the State of Michigan,* and *Detroit United Railway* v. *City of Detroit,* 37 Sup. Ct. 87.

This decision reversed the Supreme Court of the State of Michigan, as that tribunal had determined the issues favorably to the city and State. *People* v. *Detroit United Railway,* 162 Mich. 460, 139 Am. St. Rep. 582, 125 N. W. 700, 127 N. W. 748; *Detroit United Railway* v. *City of Detroit,* 173 Mich. 314, 139 N. W. 56.

A consideration of these two Michigan cases discloses that the decisions were founded upon a construction of the ordinances requiring the predecessors of the Detroit United Railway to charge a single fare for transportation between any two points on their lines within the city limits. The Michigan court considered that in entering into this contract the parties had borne in

mind the power of the State to increase or diminish the territory of a city and that the words "city limits" were used with reference to what the boundaries of the city might be in the future. This construction is upheld by *St. Louis Gaslight Co.* v. *City of St. Louis,* 46 Mo. 121; *Town of Toledo* v. *Edens,* 59 Iowa 352, 13 N. W. 313; MCQUILLIN, MUN. ORDINANCES, §218. The decision in the two Michigan cases is in harmony with *Indiana R. Co.* v. *Hoffman,* 161 Ind. 593, 69 N. E. 399, and *Peterson* v. *Power Co.,* 60 Wash. 406, 111 Pac. 338, 140 Am. St. Rep. 936, the facts and questions involved in these decisions being very similar to the two principal cases.

The contract clause of the Federal constitution is not directed against all impairment of contract obligation. It does not reach mere errors committed by a State court when passing upon the validity or effect of a contract under the laws in existence when it was made. And so, while such errors may operate to impair the obligation of the contract, they do not give rise to a Federal question. *Cross Lake Club* v. *Louisiana,* 224 U. S. 632, 639, 56 L. Ed. 924, 32 Sup. Ct. 577, and cases there cited. And on this point the jurisdiction of the Federal Supreme Court was questioned by respondents in error. However, the court did not consider that the decisions of the State courts turned upon the mere meaning of the contracts founded upon an acceptance of the terms of the ordinances; but that the decisions were reached only through a consideration of the combined effect of those ordinances and the acts of the legislature of Michigan, which thereafter extended the city limits. And when the State court, "either expressly or by necessary limitation, gives effect to a subsequent law of the State whereby the obligation of the contract is alleged to be impaired, a Federal question is presented. In such a case it becomes our duty to take jurisdiction and to determine the existence and validity of the contract, what obligations arose from it, and whether they are impaired by the subsequent law." *Cross Lake Club.* v. *Louisiana,* supra. It has also been held in *Gelpcke* v. *City of Dubuque,* 1 Wall. 175, 17 L. Ed. 520, and in many cases which have followed the doctrine set forth in that case, that if the contract when made was valid by the laws of the State as then expounded and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent decision of its court. See WILLOUGHBY, CONST., 922.

The pivotal question therefore would seem to be whether or not the Michigan court's decision, in determining the obligation of the contract, did give effect to the subsequent act of the legislature. It is apparent that in determining whether or not the State court has given effect to any subsequent legislation so as to impair the obligation of the contract, the Federal court is not bound by the wording of the opinion of the State court, but may determine for itself whether or not effect was in fact given to subsequent legislation. "Otherwise, although it was the aim of the suit and effect of the judgment to give vitality and operation to the subsequent law, and this court might be of the opinion that there was a valid contract which thereby would be impaired, it would be powerless to enforce the constitutional guarantee." *Louisiana Ry. & Nav. Co.* v. *Behrman,* 235 U. S. 164, 170, 59 L. Ed. 175, 180, 35 Sup. Ct. 62, and cases there cited.

The court thereupon went into a consideration of the cases on the merits, and being unable to accept the construction adopted by the Michigan court of the ordinances referred to above, it was of the opinion that the decisions reached by the State court could have been reached only by giving effect to the subsequent acts of the State legislature which made the annexed territory subject to the ordinances of the city, and thereby impaired the obligation of the contracts between the suburban lines and the villages and townships which granted the franchises. Justice CLARKE rendered a dissenting opinion in which Justice BRANDEIS concurred. These justices considered that "the passing of the valid extension act merely created a situation under which the implied condition *existing in the fare contract from beginning,* finds an application in the new territory. This is giving effect not to the terms of the act of the legislature, but to the terms of the contract with the city, and the most that can be said against the decision of the Supreme Court of Michigan is that it gives an erroneous construction of the contract." But this does not give rise to a Federal question within the rule of *Cross Lake Club* v. *Louisiana,* supra. W. L. O.

THE RIGHT TO RESCIND STOCK-DIVIDENDS ALREADY DECLARED.—The rule that cash dividends, once declared and published, become debts, irrevocable and absolutely due the shareholder, is so well-established as to hardly merit discussion. 7 COOK, CORPORATIONS, §541; 5 TAYLOR, CORPORATIONS, §568; MACHEN, MODERN LAW OF CORPORATIONS, §1358; MORAWETZ, CORPORATIONS, §445; CLARK & MARSHALL, PRIVATE CORPORATIONS, §517d. But in the recent case of *Staats* v. *Biograph Co.,* 236 Fed. 454 (C. C. A. 1916), the same question is raised as to stock dividends.

The corporation was capitalized for $2,000,000 with all but $1,000 of this stock outstanding, and for over a year there had been a surplus each month of over $1,000,000 though there was a regular annual dividend of 12%. At this stage the directors declared and published a scrip dividend of 50% of the outstanding capital to be paid for in stock or cash at the option of the directors. Before any scrip was actually issued the European war broke out and the directors, having well-grounded apprehensions as to the effect of the war on their business, voted to rescind the dividend. The plaintiff was a shareholder and sought to collect the dividend on his shares in the present action. The court affirmed the right of the directors to rescind the dividend and denied the plaintiff any recovery.

The court recognized the prevailing doctrine as to *cash* dividends, but excepted stock dividends from the rule. The only authorities cited to support the distinction were *Terry* v. *Eagle Lock Co.,* 47 Conn. 141, a dictum in *Dock* v. *Schlichter Jute Cordage Co.,* 167 Pa. 370, and MACHEN, MODERN LAW OF CORPORATIONS, §601. As the *Cordage Company* case is not in point and MACHEN cites *Terry* v. *Eagle Lock Co.* as his sole authority, we may consider that case alone. Doing so we find that the decision was based squarely on the laches of the plaintiff. Inasmuch as the case seems to be the only one in which the subject of the present discussion has been raised prior to